

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

**SIMON GARCIA, REBECCA GARCIA,
JOSE CAMPOS, and CHRISTOPHER
GARCIA**

Plaintiffs,

vs.

**SWIFT BEEF COMPANY, MANNY
GUERRERO, ASHLEY HENNING,
JACOB MONTOYA, and DONNA
ESTRADA,**

Defendants.

Case No. 2:20-cv-00263-Z

INDIVIDUAL DEFENDANTS' MOTION TO DISMISS

Defendants Manny Guerrero, Ashley Henning, Jacob Montoya, and Donna Estrada (collectively, "Individual Defendants") hereby file their Motion to Dismiss and state as follows:

Plaintiffs contend they contracted COVID-19 at work and seek to hold some of their fellow employees liable for allegedly failing to provide a safe workplace. The issue the Court must decide is whether the Individual Defendants can be held personally liable for allegedly failing to provide a safe workplace when binding Texas Supreme Court precedent holds that the duty to provide a safe workplace is a nondelegable duty imposed on, and belonging solely to, employers and is not a duty owed by individual employees of the company. Because the Individual Defendants cannot be held personally liable under the facts of this case and any attempt to amend the allegations would be futile, the Court should dismiss Plaintiffs' claims against the Individual Defendants with prejudice.

In accordance with Local Rule 7.2, the Individual Defendants are filing their Brief in Support of Individual Defendants' Motion to Dismiss concurrently herewith and request that the

claims against them be dismissed with prejudice for all the reasons stated therein. The Individual Defendants also request that Plaintiffs' claims be dismissed for all the reasons explained in Swift Beef Company's Motion to Dismiss and the Brief in Support of Swift Beef Company's Motion to Dismiss.¹

Conclusion

For all the reasons explained above, in the Brief in Support of Individual Defendants' Motion to Dismiss, in Swift Beef Company's Motion to Dismiss, and in the Brief in Support of Swift Beef Company's Motion to Dismiss, the Individual Defendants respectfully request that Plaintiffs' claims be dismissed and that the Individual Defendants be granted all other and further relief to which they are entitled either at law or in equity.

¹ To avoid duplication, the Individual Defendants hereby incorporate the facts and arguments set forth in Swift Beef Company's Motion to Dismiss and the Brief in Support of Swift Beef Company's Motion to Dismiss. Thus, the Individual Defendants will not repeat those arguments here.

Respectfully submitted,

/s/ Alexander Brauer

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**ATTORNEYS FOR DEFENDANT
SWIFT BEEF COMPANY**

CERTIFICATE OF SERVICE

On November 18, 2020, I filed Individual Defendants' Motion to Dismiss with the clerk of court for the U.S. District Court, Northern District of Texas. I hereby certify that I have served the document on all counsel of record by a manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Alexander Brauer

Alexander Brauer